

Claimant has filed a proceeding to review and modify an earlier Award. As part of the review and modification proceeding, claimant has requested a vocational rehabilitation assessment. The Administrative Law Judge ordered the assessment. The respondent and insurance carrier request this review to determine whether the claimant is entitled to a vocational rehabilitation assessment. This is the sole issue before the Appeals Board for review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds:

(1) Under the facts and circumstances presented, the Appeals Board finds that a vocational rehabilitation assessment is appropriate.

This is a request for vocational rehabilitation assessment arising in the context of a review and modification proceeding. Claimant injured both upper extremities while working for the respondent. After a period of treatment, claimant was returned to work by respondent in an accommodated and temporary position. Claimant was recently caught up in a reduction-of-force situation and laid off by respondent.

A primary purpose of the Workers Compensation Act shall be to restore the injured employee the ability to perform work in the open labor market and to earn comparable wages. K.S.A. 44-510g(a).

When as a result of an injury or occupational disease which is compensable under the Kansas Workers Compensation Act, the employee is unable: (1) to perform work for the same employer at a comparable wage with or without accommodation, or (2) enter the open labor market to perform work for which such employee has previous training, education, qualifications, or experience and earn a comparable wage, such employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore to such employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto. K.S.A. 1992 Supp. 44-510g(d).

There is nothing in the statutes pertaining to vocational rehabilitation to restrict and limit its application to pre-award situations. In fact, subsection (j) of K.S.A. 44-510g specifically provides that review and modification is appropriate when vocational rehabilitation is completed after an award has been entered. Therefore, under the facts presented, vocational rehabilitation assessment is appropriate and the Order of the Administrative Law Judge should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated March 15, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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